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MICHAEL RODAK, JR., C

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

Nos. 72-792
72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*,
Appellants

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,
Intevenors-Appellants,

-against-

DOLORES DUBLINO, *et al.*,
Appellees.

BRIEF OF APPELLEES IN RESPONSE TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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PRELIMINARY STATEMENT

Appellees ("Plaintiffs") submit this brief in accordance with Rule 41, in response to the Brief for the United States as *Amicus Curiae*, which was filed on April 3, 1973, after Plaintiffs' brief in chief was filed in this Court.

ARGUMENT

I.

In the face of the overwhelming evidence of preemptive intent contained in the legislative history of WIN (See Brief of Appellees at 27-37), *Amicus Curiae* United States (hereafter the "*Amicus*") cites but two examples of the fact that "Congress from time to time expressed an interest in having the states encourage AFDC recipients to seek and accept employment." Brief of the United States at 12-13. One alleged example of this Congressional concern is the community work and training program (Soc. Sec. Act §409, 42 U.S.C. §609), which permitted the states to create "work relief" programs for AFDC recipients. Brief of the United States at 13. Significantly, the *Amicus* neglects to mention that the provisions of §409 were *repealed*, by the same legislation in which Congress created WIN! See Pub. L. 90-248, §204(c)(2), 81 Stat. 892 (1968); see also, discussion in Brief *Amici Curiae* of National Welfare Rights Organization *et al.* (hereafter "NWRO Brief"), at 28-29.

Similarly, the *Amicus points to a committee report concerning the creation of the AFDC-U program* (42 U.S.C. §607), without discussing the fact that Congress in 1967 completely altered the focus of AFDC-U by requiring referral of all AFDC-U recipients to WIN within 30 days. See Pub. L. 90-248, §203(a), 81 Stat. 883 (1968); Brief of Appellees at 43; NWRO Brief at 29, 36.

In short, these purported examples of Congressional "interest" in continued state programs merely emphasize the fact that Congress in enacting WIN in 1967 fundamentally changed its approach to work programs for AFDC recipients, by creating an exclusive and com-

prehensive federal program which precluded state activity in this field.

Apparently realizing the insufficiency of its legislative history argument, the *Amicus* seeks to discern Congressional intent in enacting WIN from the manner of implementation of WIN subsequent to its enactment. Apart form the fact that subsequent history of WIN would seem irrelevant to the question of prior Congressional intent, there is nothing in the Brief of the United States which can overcome Plaintiffs' arguments in this regard.

On the contrary, there is every indication that Congress in 1967 expected that WIN would be fully capable of serving the employment needs of all appropriate AFDC recipients:

> "... [I]t is anticipated that virtually all individuals who are referred to the Secretary of Labor by the welfare agencies will participate in the Program."
>
> S. Rep. 744, 90th Cong., 1st Sess. (1967), at 148.

Later, Congress recognized that certain inadequacies in the 1967 WIN program prevented realization of this Congressional goal; it thus reaffirmed its commitment to WIN as the exclusive compulsory work program for AFDC recipients, by enacting the 1971 Amendments to WIN. See discussion, Brief of Appellees at 21-22; NWRO Brief at 56-58.

Pursuant to the 1971 Amendments, New York's WIN Program can be expected to service all employable AFDC recipients within a reasonable period of time. *Amicus* indicates that "there are expected to be 150,000 registrants in the current fiscal year, but the Secretary of Labor has contracted with the State to provide services to only 90,000 registrants." Brief of the United States at 15.

It must first be noted that in the initial year of implementation, *current* recipients of AFDC are being required to register; once that process is completed, the only *new* registrants will be those registered upon their entry onto the AFDC rolls, and those current recipients whose circumstances have changed.

Since at any one time only approximately 32% of the AFDC caseload consists of recipients who entered the rolls within one year,[1] and since many registered recipients presumably will become exempt through changed circumstances, the number of registrants for WIN can be expected to decline rapidly as the initial registrants are processed through WIN. Moreover, since the State Defendants candidly concede that they will only be able to register 75,000 recipients in the first year [Brief of State Defendants at 17], while the Department of Labor expects to be able to service 90,000 recipients [Brief of United States at 15], it is obvious that WIN will be able to service at least all registrants in the current year.[2]

Yet all this is beside the point; the goal of WIN is not to process as many people as possible as quickly as possible. Providing WIN services to AFDC recipients as required by Congress naturally takes time. Congress has exercised its judgment to require provision of such services, calculated to render recipients truly employable. See Brief of Appellees at 18. New York cannot, in the guise of "supplementing" WIN, deny those services to WIN registrants.

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[1] See N.Y. State Department of Social Services, "Characteristics of ADC Families in New York State," Program Analysis Report No. 50 (1972), at 14.

[2] It bears repeating once again that while in New York WIN is in operation in "only" 12 of 64 Social Services districts [see Brief of the United States at 15], these districts contain 93% of all AFDC recipients. See NWRO Brief at 56 n. 29.

II.

The *Amicus* denies the existence of any conflict with or frustration of WIN through implementation of the New York Work Rules. Apparently aware that it could find no support there for its view, *Amicus* completely ignores the record below. The Work Rules' frustration of the WIN Program has been extensively discussed in the Brief of Appellees (see pages 15-27), and there is no need to restate those conflicts here. Appellees can only add that to characterize the New York Work Rules' mandatory 30 day denial of assistance as a "minor difference," only "slightly longer" (Brief of the United States at 17-18) than the sanction imposed under WIN [see 42 U.S.C.A. §602(a)(19)(F)], is strange indeed. In those cases in which the AFDC recipient elects immediate compliance with WIN, "slightly longer" is thirty days longer to be precise—there is no minimum penalty in WIN; denial of assistance is only for ". . . so long as . . ." [42 U.S.C.A. §602(a)(19)(F)] there is a refusal to comply. This Court has recognized the "desperate" situation of a recipient of public assistance denied benefits, *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); when viewed in that light, the mandatory 30 day penalty is harsh indeed.

III.

In asserting the Work Rules' conformity with 42 U.S.C. §602(a)(10), the *Amicus* takes a position which this Court has specifically disapproved in other cases involving state-imposed conditions of eligibility for AFDC:

"In *Townsend*, we also expressly disapproved the Department of Health, Education and Welfare

(HEW) policy *which permitted States to vary eligibility requirements from the federal standards without express or clearly implied congressional authorization." Carleson v. Remillard*, 406 U.S. 598, 606 (1972); see also *Townsend v. Swank*, 404 U.S. 282, 286 (1971). (Emphasis supplied.)

The policy of HEW which this Court specifically rejected in *Townsend* and *Carleson* was embodied in the so-called "Condition X," or "equitable treatment" regulation, 45 C.F.R. §233.10(a)(1)(i), (ii):

"(a) *State plan requirements.* A State plan under Title I, IV-A, X, XIV, or XVI, of the Social Security Act must:

"(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. Under this requirement:

"(i) States have substantial latitude and corresponding responsibility for determining the coverage, nature and scope of their public assistance programs. Although the public assistance titles define the coverage in which the Federal Government will participate financially, a State may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act.

"(ii) The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act."

Notwithstanding this Court's rejection of "Condition X," *Amicus* seeks to achieve an identical result by

drawing an artificial distinction between "State attempts to narrow specific federal eligibility standards" [Brief of the United States at 9] and "the right of the states to impose additional eligibility conditions required by administration necessity or justified by underlying state welfare purposes" [Brief of the United States at 9-10]. The latter are allegedly permissible, "so long as they do not contravene the federal policies *inherent in the federal eligibility standards.*" Brief of the United States at 10. To put it more bluntly, the *Amicus* takes the position that state-imposed eligibility conditions are to be presumed valid unless they contravene policies "inherent" in federal eligibility standards, a position rather less rigorous than that enunciated by this Court:

> "[A]t least in the absence of Congressional authorization for the exclusion *clearly evidenced* from the Social Security Act or its legislative history, a *state eligibility standard that excludes persons eligible for assistance under federal AFDC standards* violates the Social Security Act and is therefore invalid under the Supremacy Clause."
>
> *Townsend v. Swank*, 404 U.S. 282, 286 (1971). (Emphasis supplied.)

There is no indication in any of the cases dealing with §602(a)(10) that the purported distinction of the *Amicus* has any validity. On the contrary, the eligibility conditions imposed by the New York Work Rules are logically indistinguishable from those imposed in *Townsend* and *Carleson*. In all of these cases persons "eligible" for assistance by the terms of the Social Security Act are denied assistance on the basis of eligibility conditions not authorized by Congress.[3]

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[3]This Court's decision in *Wyman v. James*, 400 U.S. 309 (1971), cannot be read as a limitation on *Townsend* and *Carleson*. Though *James* was decided on strictly constitutional grounds, see

The *Amicus* does not treat the so-called "NOLEO" (Notice to Law Enforcement Officers) cases: *Taylor v. Martin*, 330 F.Supp. 85 (N.D. Cal.), *aff'd sub nom. Carleson v. Taylor*, 404 U.S. 980 (1972); *Doe v. Swank*, 332 F.Supp. 61 (N.D. Ill.), *aff'd sub nom. Weaver v. Doe*, 404 U.S. 987 (1971); *Meyers v. Juras*, 327 F.Supp. 759 (D. Ore.), *aff'd* 404 U.S. 803 (1971). These cases are ignored because they do not fit the Amicus' attempt to construct a theoretical distinction between the narrowing of the class of eligibles and the imposition of additional requirements. In each of these cases, states sought to deny or terminate assistance upon a mother's refusal to take action to recover support or establish paternity for her abandoned child. In each case the eligibility condition was enjoined because it was not authorized by the Social Security Act, and in each case this Court affirmed. A situation more closely analogous to this case would be

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400 U.S. at 338 (dissent), this Court, in engaging in the balancing of interests required in Fourth Amendment cases, cited a great deal of evidence that Congress intended that home visits be utilized in assessing eligibility. 400 U.S. at 315-16, 318-21. Likewise, *Snell v. Wyman*, 281 F.Supp. 853 (S.D.N.Y.), *aff'd* 393 U.S. 323 (1968), is inapposite. The court in *Snell* assessed New York's provisions for recovery of after-acquired assets *not* in light of §602(a)(10), but in light of the Constitution and the broad purposes of the AFDC program. Moreover, *Snell* was decided before this Court's decisions in *King v. Smith*, 392 U.S. 309 (1968), *Townsend*, and *Carleson*; this Court's summary affirmance can hardly be considered persuasive as to an issue never treated by the District Court. The fallacy in the purported distinction of the *Amicus* is that most cases can be characterized in a variety of ways. Thus, the condition enjoined in *Townsend* can be viewed either as a narrowing of the class of eligibles *or* as a prohibition on college attendance. Similarly, the New York Work Rules can be viewed either as a narrowing of the eligibility conditions contained in 42 U.S.C.A. §§606, 607 and 602(a)(19)(A) or as a requirement that AFDC recipients do certain specified acts.

hard to imagine. In the NOLEO cases, the states pointed to provisions of the Social Security Act concerning support and paternity [42 U.S.C. §§602(a)(11), (17)], and asserted that their eligibility conditions merely furthered the goals of those provisions. The courts rejected that argument, since Congress had not authorized denial of assistance and had strictly delineated the manner in which these undenied goals were to be achieved. In this case, New York seeks to terminate AFDC benefits for failure to comply with a myriad of work-related eligibility conditions [see Brief of Appellees at 38-39], and points to the provisions of WIN, asserting that the Work Rules merely further the goals of the Social Security Act. But like the NOLEO cases, in this case there is absolutely no indication of Congressional authorization for the eligibility conditions imposed by the Work Rules. And, like the NOLEO cases, Congress has strictly delineated the way in which AFDC recipients are to be required to work—through the WIN program. The absence of Congressional authorization in this case is even clearer than in the NOLEO cases, however. Congress has *specifically created* a work-related "condition of eligibility" [42 U.S.C.A. §602(a)(19)(A)], so that the New York Work Rules literally *vary* federal eligibility standards.[4]

[4]The *Amicus* apparently alters its interpretation of §602(a)(10) depending upon the circumstances of particular cases. Thus, in arguing against a finding of preemption by WIN of the states' power to impose their own compulsory work requirements on appeal of *Jefferies v. Sugarman*, ___ F. Supp. ___, No. 71 Civ. 2060 (S.D.N.Y. July 11, 1972), HEW stated:

"Acceptance of employment by an employable person as a condition of eligibility is, apart from the WIN program, a product of state laws and regulations. *It is not a condition of eligibility required by the Social Security Act to be imposed on otherwise eligible AFDC applicants and recipients, nor is*

The *Amicus* asserts that there has been an "historical understanding" that the States may impose additional requirements, including compulsory work requirements, "so long as their policies are in harmony with expressed federal purposes and do not take the form of *de facto* amendments to the federal definition provisions." Brief of the United States at 12. Whatever may have been the "historical understanding" of HEW and the states, this was not the understanding of Congress. See *supra*, pages 1-3; Brief of Appellees, pages 27-37. And it is to Congressional understanding that we must look under *Townsend* and *Carleson* in assessing state imposed eligibility conditions.

State choice in the matter recognized by the Act. It could thus be argued that state work programs such as New York's are incompatible with the Social Security Act as interpreted by the Supreme Court in *Townsend* because they involve eligibility conditions which are not sanctioned by the Act or by its legislative history, without getting into the question of whether the WIN program preempts the state's work rules by federal and state standards."

United States Department of Health, Education, and Welfare, Memorandum of Law *Amicus Curiae* in *Jefferies v. Sugarman*, No. 72-8108 (2d Cir.), at 5. (Emphasis supplied.)

Interestingly, in support of this suggestion, HEW cited the very NOLEO cases ignored by *Amicus*. *Ibid.* See NWRO Brief at 13-15.

CONCLUSION

The judgment of the District Court should be affirmed.

Dated:

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